IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

LA.App..No. 38 of 2002(D)

LAR.182/1999 of III ADDL.SUB COURT, ERNAKULAM
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APPELLANTS: CLAIMANTS
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1. VILASINI AMMA, D/O.MADHAVI AMMA,
AGED 66, MATTAPPILLIL HOUSE,PONNURUNNI.

2. PADMAKUMARI, D/O. VILASINI AMMA,
DO. DO. DO.

BY ADV. SRI.K.R.MOHANAN

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA

2. SENIOR INSTALLATION MANAGER, BPC LTD.,
IRUMPANAM.

R2 BY ADV. SRI.A.M.SHAFFIQUE

R1 BY GOVERNMENT PLEADER SRI K.V.MANOJ

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 17/09/2007 ALONG WITH LAA NO. 78 OF 2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.Nos.38 & 78 of 2002

Dated: September 17, 2007

JUDGMENT

Harun-Ul-Rashid, J.

These two appeals are filed by the claimants in LAR Nos.182/1999 and 50/2000 respectively on the file of the Sub Court, Ernakulam. By a common judgment dated 9.8.2001 these two Land Acquisition References were disposed of along with three other cases. The lands were acquired for the purpose of laying pipe line for Bharat Petroleum Corporation Ltd. sec.4(1) notification was published for the last time on 15.2.1997. The extent of land acquired in LAR No.182/1999 is 0.67 ares and 0.33 ares which are categorised as Nos.III and IV respectively. The land acquisition officer valued category III land at Rs.1,84,200/- per Are and category IV land at Rs.1,47,400/- per Are. In LAR 50/2000 the extent of land acquired under category III is 0.09 Ares and under Category IV is 0.20 Ares . The claimants in both the cases filed claim statements seeking enhancement of compensation stating that the acquired lands have Aluva-Vaikom main road frontage, that there are very many institutions in the vicinity of the acquired lands and therefore they are entitled to Rs.2 lakhs per cent as land value besides the claim for value of improvements. The location and importance of the property is highlighted in the claim statement, that Vytila junction is closeby, that there are hospitals, schools, medical shops, markets, churches, temples and shopping complex in the locality, that the Ernakulam City Railway Station, Nedumbassery International Air Port, Cochin Port and Rajiv Gandhi Indoor Stadium are also situated near to the acquired lands.

2. In support of the claim for enhancement of compensation, AWs.1 and

2 were examined on the side of the claimants and Exts.A1 to A3 were marked. The respondents adduced no oral evidence, but marked Exts.B1 and B2 series and the mahazars in the respective LARs.

3. Category No.III land was valued at Rs.1,84,2000/- per Are and category No.IV at Rs.1,47,400/- per Are. According to the claimants, the nearby land belonging to one mosque was acquired by the land acquisition authority by paying land value at the rate of more than Rs.2 lakhs, that the acquired land and the land belonging to the mosque are similar and similarly situated. Exts.A1 and A3 are the documents in relation to the fixation of land value of the adjacent property belonging to the mosque. The claimants contended that Exts.A1 to A3 proceedings produced would go to show the market value of the land in the locality and therefore requested the court below to fix the market value in accordance with the value fixed for the nearby land. The court below on a consideration of the facts and circumstances held that Exts.A1 and A2 are not documents wherein the land value of the acquired land is fixed by mutual agreement and, therefore, came to the conclusion that Exts.A1 and A2 cannot be relied on to re-fix the value of the acquired land for the simple reason that they do not contain any mutual agreement whereby the value of the acquired land has been fixed.

4. The claimants have also submitted that since a portion of their land is covered by the acquisition, the balance extent of land in the possession of the claimant was injuriously affected and, therefore, they are entitled to compensation under that head also. But the court below did not grant any compensation for the balance extent of land injuriously affected by the acquisition. The court below

also did not grant any amount towards enhancement of land value by not relying on Exts.A1 to A3. Exts.A1 to A3 proceedings are in respect of the fixation of land value for the nearby property. The value fixed for the said land is by a mutual agreement between the Government, the requisitioning authority and the claimant. The value fixed therein is an indication as to the prevailing market value of the acquired land as well. Since no amount was awarded towards the value of the land and for injurious affection on the rest of the land, we are of the view that an opportunity shall be granted to the claimants for adducing further evidence in support of their claim for compensation.

In the circumstances we set aside the judgment and decree under appeal and remand the case for de novo consideration after affording an opportunity to the parties to adduce further evidence, if any. Since the appeal is remanded, the appellants are entitled to refund of the court fee. The parties will appear before the Reference Court on 22.10.2007.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. 38 & 78 of 2002

JUDGMENT

17.9.2007